

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO.50 OF 2006

Save Worli Seaface Samiti
through Keval Semlani & Anr. Petitioners
V/s.
State of Maharashtra & Ors. Respondents

Mr.Y.P. Singh with Mr.K.P. Bhalerao for the
Petitioners.

Mr.N.P. Pandit, A.G.P. for Respondent No.1.

Mr.C.J. Sawant, Senior Counsel with R.M. Sawant,
G.P. for Respondent No..2.

Mr.K.K. Singhvi, Senior Counsel for Respondnet -
B.M.C.

Mr.B.A. Desai, A.S.G. for Union of India.

Mr. Mr.R.V. Govilkar for Respondent No.4.

Mr.D.K. Shukla for Respondent No.6

Mr.Aspi Chinoy, Senior Counsel with Mr.Kevic Setalvad
and Mr.Shikhit Suri i/b M/s.Harish Joshi & Co. for
Respondent No.8.

**CORAM : R.M. LODHA, &
S.J. VAZIFDAR, JJ.**
DATED : 7TH JULY, 2006.

ORAL ORDER (PER R.M. LODHA, J) :

Save Worli Sea Face Samiti and one Ms.Jenai
Banaji have filed this writ petition in the nature of
public interest challenging Worli Sea Link Project.
The challenge is on diverse grounds and it is prayed
that the State Government and Maharashtra State Road

Development Corporation (MSRDC) be directed to construct the said sea link strictly as per the alignment specified in the statutory development plan and the statutory coastal zone management plan ; that the direction be issued to reduce the length of the main bridge in the sea from about 4 KM to 1.2 KM and that the committee of eminent experts be appointed to oversee the payment made to respondent no.8 (Hindusthan Construction Company Limited).

2. Mr.Y.P. Singh, counsel for the petitioners canvassed three points ; (1) that the length of the bridge increased to about 4 KM instead of 1.2 KM is illegal being inconsistent with the statutory development plan and coastal zone management plan ; (2) that the work on the bridge between Worli point to the intersection of the landfall at Worli sea face at Pratiksha building is being carried out without statutory environmental clearance. According to him any expansion of the existing project required a fresh environmental clearance from the Ministry of Environment and Forests (MOEF) under the notifications 27.1.1994 and 10.4.1997 ; and (3) that there has been large scale violation in award of contract and though competitive bid was for Rs.401 crores now the project cost has increased to Rs.1306 crores. The submission

is that this is killing burden of toll on the citizens who have to pay more than double the toll for almost 30 years for no fault of theirs.

3. In opposition to the writ petition, the affidavits have been filed by the respondents. On behalf of the respondent no.2 - MSRDC, the affidavit has been filed by Mr.Sharad Madhukar Sabnis (Superintending Engineer). Besides raising the preliminary objection about the maintainability of the writ petition in the nature of public interest litigation, it is suggested that the petition is motivated. According to the MSRDC huge amount of work relating to the project has already been done totally costing Rs.418 crores till the end of June, 2005. The package I, II and III have been completed. Even in respect of package IV about 300 pile foundations, 29 piers, 26 pier caps, 590 segments, and 13 approach spans have been constructed upto July, 2005. About 650 meters on the four lane bridge has already been constructed. It is stated that in the group of writ petitions filed earlier before this Court, the Division Bench of this Court has negatived the challenge to the bridge and EIA notification dated 19.2.1991.

4. On behalf of respondent no.8, the affidavit has been filed through one Jayaram Praneshrao and they have also set up the plea that various contentions raised in the writ petition are concluded by the earlier judgment of this Court delivered on 9.10.2001.

5. On behalf of MOEF, Government of India, affidavit has been filed by Dr.A. Mehrotra, Additional Director working at the regional office (Western Zone), Bhopal pursuant to the order of this Court dated 16.11.2005. In his affidavit, Dr.Mehrotra stated that MOEF granted environmental clearance to Bandra-Worli sea link project on 7.1.1999 subject to the compliance of the specific terms and conditions stated therein. Two conditions particularly condition Nos.(viii) and (xvii) were amended vide letter dated 26.4.2000. Another proposal in August, 1999 was received from the MSRDC for environmental clearance for Western freeway sea link project from Worli to Nariman Point, (stage II). He has stated in his affidavit that the Western freeway sea link project is to connect Bandra Nariman Point and Bandra - Worli sea link already cleared by the MOEF is a part and parcel of the Western freeway. While examining the project documents for consideration of the environmental clearance of this project, the Ministry has noted that

the Western freeway is a North-South sea link connecting the Worli end off Bandra-Worli sea link to Nariman Point. While examining the proposal of Western freeway from Worli to Nariman Point, MOEF examined the techno-economic feasibility and Environmental Impact Assessment (EIA) for Western freeway sea link dated September, 1999 submitted by the MSRDC. The report provided details relating to ambient air quality, meteorology, noise environment, water quality, marine sediments, land environment, soil quality, biological environment including aquatic environment and socio-economic features. The study area included the Worli village area where Worli point to Bandra-Worli sea link is located. According to Dr.A. Mehrotra, the environmental impact assessment study report has concluded that the impacts due to project could occur during the construction phase. However, during operation of the project, no deterioration of the water quality is envisaged. With regard to the other parameters, such as air, noise and flora and fauna, no adverse impacts are also envisaged. After taking into consideration the EIA report prepared for the Western freeway sea link project and the public hearing, the MOEF accorded environmental clearance to the project on 10.2.2003. It is noticed in the affidavit of Dr.A. Mehrotra that

the MSRDC sent the information vide letter dated 9.10.2001 that there has been change in the alignment on Worli side (southern end) and also introduction of a long span bridge. According to him, the change made was within the ambit of the environmental clearance dated 7.1.1999 and environmental impact assessment of the Western freeway sea link that includes Worli area also covers the proposed alignment.

6. The petitioners have filed re-joinder to the affidavits in reply filed by the aforesaid respondents and reiterated their stand set up in the writ petition.

7. On 16.11.2005 the Bench observed that many of the issues raised in the public interest litigation are already covered by the judgment dated 9.10.2001. In the said order, it was noticed that the grievance of the petitioners about the increase of the length of the bridge from 1.2 KM to 4 KM (Bandra to Worli that connects to the Worli sea face road near Pratiksha building and Vishnu Villa building and toll plaza) has already been negatived in the earlier judgment. As the issue regarding the modified alignment after the environmental clearance was granted was not in issue in the earlier writ petitions, the Bench wanted to

know from the MOEF as to whether the modified alignment for Worli point to Pratiksha building has any impact on the environment and whether the environmental impact assessment in this regard has been done by the Ministry and, accordingly, MOEF was directed to explain this position on affidavit. The affidavit of Dr.A. Mehrotra, as noticed above, is pursuant to the order passed by this Court on 16.11.2005.

8. The contention raised by Mr.Y.P. Singh about the increase of length of the bridge from 1.2 KM to 4 KM was noticed by the Division Bench in the earlier judgment dated 9.10.2001. In paragraph 2 of the said judgment, the Division Bench recorded that the length of the approach bridge of Bandra-Worli site is 3.5 KM and the total length of the bridge is about 4 KM. Then again in paragraph 13, the Division Bench noticed thus :-

"The proposal was submitted by MMRDA to the Ministry of Environment and Forests on 10th June, 1993, along with the Techno-Economic Feasibility Report prepared by the said Consultants in October 1992 for environmental clearance. In order to obtain views of the local NGOs and citizen groups regarding the Bandra-Worli Sea-Link Project, seminars were held on 30th November, 1993 and 20th January, 1994, and the

subject was discussed at length, and representatives from Bombay Natural History Society, Bombay Environmental Action Group, Society for Clean Environment, Western India Automobiles Association, Save Bombay Committee, Indian Heritage Society, etc., attended the seminars. The project consists of :-

- (1)
- (2)
- (3)
- (4) The bridge from Bandra to Worli, which connects to the Worli Sea Face Road near Pratiksha and Vishnu Villa Buildings and toll plaza. The total length of this Bridge is 4.0 km., and it comprises of Cable Stayed Bridge of 0.5 km. and approach bridges of 3.5 km."

It would be thus seen that in the earlier judgment, the Division Bench was conscious of the fact that the total length of the bridge is about 4 KM. The issue that the length of the bridge that it has been increased from 1.2 KM to 4 KM is inconsistent with the development plan and coastal zone management plan (CZMP), in our opinion, cannot be permitted to be opened now.

9. In the earlier judgment dated 9.10.2001, the Division Bench while considering the question whether in a public interest litigation, the project like this

should be quashed, held that the city of Bombay faces an accute traffic problem ; the existing infrastructure is over-burdened, and that there is need to take steps which may reduce the traffic burden on the existing infrastructure. The Division Bench highlighted that while maintaining and observing environment and ecology, the Government is also required to solve other problems, which are of varied nature and also involving public interest, and therefore, a balance has to be struck between the two. The question before us is whether at this distance of time when substantial progress has been made in construction of Western freeway and huge expenditure exceeding Rs.500 crores has already been incurred, the project should be quashed and for the alleged lack of environmental impact assessment with regard to the change of alignment, direction needs to be issued to the MOEF to carry out the environmental impact assessment under the notifications dated 27.1.1994 and 10.4.1997.

10. As the city of Mumbai started increasing beyond its capacity with ever increasing problems of traffic congestion, pollution and wastage of excessive fuel ; the State Government appointed the Wilbur Smith Committee in the year 1960 for conducting the

comprehensive study of the traffic situation in the city of Mumbai. Wilbur Smith Committee submitted the report and recommended the construction of the parallel road that is the construction of Western freeway. Certain other committees also conducted the study on the development of Mumbai and recommended such road. After concluding the technical and economic feasibility of the project in the year 1992, for the purposes of obtaining the environment related approval, the proposal was submitted to the MOEF in the year 1993. On 27.1.1994 and 10.4.1997 the environmental impact assessment notifications were issued by the MOEF that provided for the requirement and procedure for seeking environmental clearance of the projects. As regards Bandra Worli sea link, on 7.1.1999 the environmental clearance was given by the MOEF on the terms and conditions specified therein. The environmental clearance dated 7.1.1999 clearly stipulate strict compliance of the terms and conditions mentioned therein. The said conditions read as under :-

"i) Adequate provision for infrastructural facilities including water supply, fuel and sanitation must be ensured for labourers during the construction period in order to avoid any damage to the existing environment.

ii) Appropriate measures must be taken while undertaking digging activities to avoid degradation of water quality.

iii) Borrow sites for earth, quarry sites for road construction material and dump sites must be identified keeping in view :

- a) No excavation or dumping on private property is carried out without written consent of the owner;
 - b) No excavation or dumping shall be allowed on wetlands, forest areas or other ecologically valuable or sensitive locations;
 - c) Excavation work should be done in consultation with the Soil Conservation and Watershed Development Agencies working in the area; and
 - d) Construction spoil including the bituminous material and other hazardous material must not be allowed to contaminate water courses and the dump sites for such materials must be secured so that they should not leach into the ground water.
- iv) The construction material should be obtained only from approved quarries. In case new quarries are to be opened, specific approvals from the competent authority should be obtained in this regard.
- v) Adequate precautions should be taken during transportation of the construction material both via road/sea route so that it

does not affect the environment adversely.

- vi) Borrow pits and other scars created during road construction should be properly levelled and treated.
- vii) The project affected people should be adequately rehabilitated and the details in this regard should be furnished to this Ministry.
- viii) The land reclamation should be kept to the bare minimum (not exceeding 4.7 hectares) and the same should be monitored closely so that it does not violate the provisions of the Coastal Regulation Zone (CRZ) Notification, 1991 as amended subsequently.
- ix) Access to the beach for the public should be ensured through construction of adequate underpasses at appropriate locations.
- x) Wherever fishing activities are getting affected, the concerned association/union of fishermen should be consulted and their concurrence obtained for this project.
- xi) No commercial or residential activity/development would be allowed on the seaward side of this road. On the land ward side (within 100 metres) between existing habitations/establishments and the road, no commercial activity except that relating to collection of toll for the users of the road would be permitted.
- xii) No additional benefits for

construction/development shall accrue in terms of Annexure I, paragraph 6, sub-paragraph 2 under CRZ-II(i) of the CRZ Notification dated 19.2.1991 as amended on 9.7.97 vide SO No.494(E) on account of environmental clearance accorded to this project.

- xiii) The clearance for the proposed Worli Bandra Link Road Project is, in no way, linked to the environmental clearance for the proposed Western Freeway. The proposal for Western Freeway as and when referred to this Ministry for clearance will be considered on its own merit as a stand alone project.
- xiv) Tree felling should be avoided to the extent possible. In case it becomes essential to do so, the trees which are necessary to be felled should be identified before hand and necessary approval from the competent authority should be obtained for felling the same. Sufficient number of trees of suitable species should be planted in lieu of the trees felled. No mangroves shall, however, be removed for implementation of the project.
- xv) Adequate financial provision must be made in the project to implement the aforesaid safeguards.
- xvi) Full support should be extended to the officers of this Ministry's Regional Office at Bhopal by the project proponents during inspection of the project for monitoring purposes by furnishing full details and action plan including action taken reports

in respect of mitigative
measures and other
environmental protection
activities.

xvii) A six-monthly monitoring report shall be submitted to the Regional Office of this Ministry at Bhopal regarding the implementation of the stipulated conditions.

xviii) The Ministry or any other competent authority may stipulate any other conditions or environmental safeguards, subsequently, if deemed necessary, which should be complied with.

xix) The Ministry reserves the right to revoke this clearance if any of the conditions stipulated are not complied with to the satisfaction.

xx) In the event of a change in project profile or change in the implementing agency, a fresh reference will be made to the Ministry of Environment & Forests."

Conditions (viii) and (xvii) were amended on 26.4.2000d and the amended conditions (viii) and (xvii) read as under :-

(i) Condition No viii The existing provision is replaced with the following -

(i) "The land reclaimed should be kept to the bare minimum and should in no case exceed 27 ha The land reclaimed should be monitored closely in order to avoid violation

of the provisions of the CRZ Notification, 1991 and its subsequent amendments. No portion of the reclaimed land should be used for residential/commercial purposes."

(ii) Condition No.xvii : The existing provision is replaced with the following :-

"A six-monthly monitoring report shall be submitted to the Regional Office of this Ministry at Bhopal regarding implementation of the stipulated conditions. An assessment of the impacts of reclamation should also be included in the report."

11. It is admitted position that in the month of August, 1999, MSRDC submitted the proposal for environmental clearance of Western freeway from Worli to Nariman Point (stage II). That Bandra-Worli sea link and Worli-Nariman Point sea link are two segments of one project namely Western freeway sea link project is beyond doubt. From the affidavit of Dr.A. Mehrotra dated 28.12.2005, it is clear and we accept that the MSRDC informed to the MOEF on 9.10.2001 regarding the change in the alignment of Worli side and introduction of long span bridge. As a matter of

fact, in the re-joinder the petitioners have not challenged this aspect. It would be thus seen that in the month of October, 2001, the MOEF was informed about the change in the alignment of Worli site and also introduction of the long span bridge. We have no justifiable reason to disbelieve the statement made in the affidavit of Dr.A. Mehrotra that by study area for environmental impact assessment from Worli to Nariman Point, Worli village area and also Worli point of Bandra-Worli sea link was assessed. It was thereafter that on 10.2.2003 MOEF accorded the environmental clearance to the Worli-Nariman Point sea link project. If the study area from Worli to Nariman Point (from southern side) include Worli village area and also where the Worli sea link is located, it can safely be held that while according the environmental clearance on 10.2.2003, the MOEF did consider the environmental impact assessment of Worli village area and also Worli point of the Bandra-Worli sea link. This is not disputed before us that before according the environmental clearance to Worli-Nariman point project on 10.2.2003, the public hearing as contemplated by the notifications dated 27.1.1994 and 10.4.1997 was given. In the back-drop of these facts, in our view the contention of the counsel for the petitioners that the change in the alignment from

Worli point to Pratiksha building was without statutory environmental clearance pales into insignificance.

12. The first and second submissions of the counsel for the petitioners thus, do not appeal us.

13. Mr.Y.P. Singh, counsel for the petitioners strenuously urged that the revised assessment bridge completion costs from Rs.401 crores to Rs.1306 crores is to help the contractors and shall result in the burden of heavy toll on the citizens who shall have to pay more than double the toll for almost 30 years. It is true that what was estimated for completion of the project in the year 1999 has increased substantially as per the estimated costs in the year 2004 but it is not correct to say that the project was assessed at the cost of Rs.401 crores in the year 1999. As per the affidavit of Mr.Rajiv Tarachand Gaikwad, Under Secretary in the Public Works Department, Bandra-Worli sea link project is to be completed as five packages being package (I) Flyover at Lovegrove junction at Worli ; (II) Interchange at Mahim intersections ; (III) Solid Approach Road to Toll Plaza ; (IV) Main Cable Stayed Bridge and Approach Bridges ; and (V) Improvement to Khan Abdul Gatter Khan Road. Out of

these, it is the package-IV, whose cost was estimated at Rs.401 crores. Now total cost of the entire project of the five packages is estimated at Rs.1306 crores. The Senior Counsel for MSRDC placed before us a statement which reflects that the cost of the Bandra-Worli sea link project as estimated in the year 1999 was Rs.665.81 crores and that is now estimated at Rs.1306 crores. The reasons for the escalation of the costs are reported to be many : (i) change in the design of interchange ; (ii) deletion of ramps in package-I ; (iii) Grade B filling for construction of casting yard ; (iv) fabrication yard in package-III ; (v) consultation fees and other contingent expenditure and (vi) interest on borrowing during the construction period. As a matter of fact, the interest component in the estimated costs in the year 1999 was Rs.84.34 crores which now has gone as high as Rs.315.66 crores in the year 2004. In this background, it is not possible to hold that the increase in the costs is to give undue advantage to the contractors. As a matter of fact, for completion of different packages, contract has been awarded to the different contractors. As a matter of fact and as experience shows any delay in completion of project like this shall result in further escalation in price and, surely, that shall not be in the public interest.

14. The project like Western freeway sea link (Bandra-Worli sea link and Worli-Nariman Point) is need of the day for city of Mumbai which is already facing accute traffic congestion. The project is in larger public interest. The first segment - Bandra-Worli sea link has substantially progressed. Rs.500 crores have already been spent by now. The challenge to the construction of this project was elaborately considered in the group of writ petitions decided on 9.10.2001 and the Division Bench found nothing against public interest in the environment clearance given by MOEF. A fortiori, almost after five years, we find no reason to hold that the project would cause any ecological or environmental damage. The change in the alignment of Worli side and introduction of long span bridge was within the knowledge of MOEF when the environment clearance on 10.2.2003 was accorded to Worli-Nariman Point sea link project (the IInd segment of Western freeway sea link) and at that time the MOEF, did consider the environmental impact assessment of Worli point of the Bandra-Worli sea link. In this view of the matter, we are satisfied that the petitioners are not entitled to any relief.

15. Though the writ petition is claimed to have been filed in the nature of public interest, for the reasons that we have indicated above, it does not seem to us to be in public interest and in any case larger public interest demands no interference by this Court. The writ petition deserves to be dismissed. We order accordingly.

(R.M. LODHA, J.)

(S.J. VAZIFDAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO.50 OF 2006

DATE OF DECISION : 7TH JULY, 2006.

For Approval and Signature :

HON'BLE MR.JUSTICE R.M. LODHA

HON'BLE MR.JUSTICE S.J. VAZIFDAR

1. Whether Reporters of Local Papers)
may be allowed to see the judgement ?)
2. To be referred to the Reporter or)
not ?)